SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1971

No. 71,563

JAMES R. ROHRBAUGH, *et al.*
Petitioners,

v.

THE PRESBYTERY OF SEATTLE, INC., *et al.*
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF WASHINGTON

PETITION FOR REHEARING

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April 12, 1972
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CRAFTSMAN & MET PRESS SEATTLE, WASHINGTON

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Lord Chief Justice Crew once said 300 years ago that the cause before him was a great and weighty cause fit for all of the judges in England to hear.

Comparably, this cause, we suggest, is a great and weighty cause for this court to hear on this petition for rehearing. The cause affects many churches and millions of people.

The undersigned counsel recognizes that petitions for rehearing are not often granted. But it does happen. He vividly recollects that when the petition for certiorari was denied in *Olmstead v. United States*, 275 U.S. 557 (1927), it was granted on a petition for rehearing (276 U.S. 609) prepared by the undersigned while professor of constitutional law at the University of Washington Law School in Seattle. After the original denial, Seattle counsel came to the undersigned and asked what else they could do. The undersigned suggested a petition for rehearing, although not then officially recognized in the rules with respect to certiorari. He was asked to prepare the petition for counsel, which he did, although his name does not appear on the record. The granting of that petition resulted in the landmark 5 to 4 decision in *Olmstead v. United States*, 277 U.S. 438 (1928). The dissenting opinions, on the side of the petitioners, later became the law of this court. At the twilight of his career the undersigned still considers the granting of that petition a high point in his professional life at the bar.

Quite frankly, the undersigned believed that the petition and reply in the present case showed the great urgency and importance of a further review of *Hull*, 393 U.S. 440 (1969), for the sharply divided state courts, especially after respondent's brief asserted that there are several alternatives besides "neutral principles of law" in determining church property disputes.

Present rule 58 on rehearing after denial of certiorari is restrictive in that it requires either new intervening circumstances or substantial grounds available to the petitioner although not previously presented.

In this case that is not an easy requirement to meet, but an effort will be made.

The petitioners kept the faith, as adjudicated by the trial court, whereas the respondents were adjudged to have made substantial changes in doctrine. Yet through judicial procedures below, inquiring deeply into church polity and structure, in violation of the First Amendment, the respondents are up to now held entitled to this valuable church property. Victory has gone to those not equitably nor morally entitled.

Respondents are now entitled to take over the property and are taking steps to do so unless this petition is granted.

The undersigned has ascertained that there are other Presbyterian Churches in the state of Washington which, because they insist on adhering to the centuries old Presbyterian confessional documents, as against the modernistic and substantially changed confession of 1967 of the national church, will lose their churches under the decision of the courts below unless this case is reversed for First Amendment violation.

One such case (*Hillcrest Presbyterian Church v. Presbytery of Seattle, Inc.*, King County, Washington, Superior Court No. 702,309) has already been decided on the authority of the present case below and is now being appealed. Other cases are in the making and in litigation elsewhere.

Since denial of the writ we have found no new decisions; but the sharp division of the state courts in their interpretation of *Hull, supra*, as summarized in our Reply Brief, with the majority of the state courts favoring peti-

tioners' position, calls urgently for a review.

We earnestly pray that such review be granted in this case. In *Gingsteel v. United States, supra,* the Court finally concluded that the issue was so important that the case should be heard. We hope the Court reaches the same conclusion here.

Respectfully submitted,

ALFRED J. SCHWEPPE
Attorney for Petitioners

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the foregoing Petition for Rehearing is presented in good faith and not for delay and that the petition is restricted to grounds specified in Rule 58.

ALFRED J. SCHWEPPE